

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

*IN RE PORK ANTITRUST LITIGATION*

Case No. 0:18-cv-01776-JRT-JFD

This Document Relates To:

ALL ACTIONS

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT  
FOR OCTOBER 17, 2022 CASE  
MANAGEMENT CONFERENCE**

Counsel for Direct Purchaser Plaintiffs, Consumer Indirect Purchaser Plaintiffs, and Commercial and Institutional Indirect Purchaser Plaintiffs, the Commonwealth of Puerto Rico, and the Direct Action Plaintiffs (collectively, “Plaintiffs”) and Defendants (collectively, the “Parties”), in the above-captioned consolidated action submit the following status report in response to Pretrial Order No. 1: Pretrial Case Management and Scheduling Order (ECF No. 1525).

**1. An overview of the procedural status of all actual and potential cases that have been or are anticipated to be transferred to or filed in this district for coordination with this MDL.**

There are 30 cases filed by Direct Action Plaintiffs that have been centralized for pretrial proceedings in this MDL. *See* Exhibit 1, attached. The parties are not aware at this time of any potential cases that have not yet been filed, but that may be centralized in this MDL at some future date.

**2. An overview of the status of discovery in all related cases to date.**

The Parties have coordinated discovery in this MDL.

Document Production. Almost all parties have substantially completed their production of documents. A few DAPs are still completing document production and expect to complete that process in the next few weeks (or in January or February for those DAPs that filed most recently).

Interrogatories. The Parties have previously objected and/or responded to certain interrogatories. The Parties have served additional interrogatories, for which the objections and/or responses are due on October 31, 2022. The Parties state that the remaining interrogatories are generally contention interrogatories, and the Parties are

discussing a stipulation about answering these a certain amount of time after all depositions have concluded. The Parties are also addressing the number of interrogatories served by DAPs with respect to the numerical limit provided in Pretrial Order No. 1.

Requests for Admission. Plaintiffs have not responded to the requests for admission served upon them; Plaintiffs' responses are currently due on October 31, 2022. Plaintiffs have not served any requests for admission on Defendants at this time, except that DAPs served one of the Defendants with requests for admission on September 30, 2022.

Depositions: The Parties have completed the substantial majority of the depositions they intend to take in this action.

Plaintiffs have completed 64 Rule 30(b)(1) depositions of Defendants. Another 19 are scheduled (or are in the process of being scheduled) by the close of fact discovery on October 31, 2022. The parties have agreed to take the following previously noticed depositions of Defendants as listed below in November, to accommodate the schedules of the witnesses and counsel:

1. 30(b)(6) Deposition of Smithfield
2. The remainder of the 30(b)(6) Deposition of Hormel
3. 30(b)(1) Deposition of Roel Andriessen of Tyson
4. 30(b)(1) Deposition of Jay Krehbiel of Tyson
5. 30(b)(6) Deposition of Tyson
6. 30(b)(1) Deposition of George Wean of Clemens

Depositions of the Direct Purchaser Plaintiffs (“DPPs”) have concluded.

Depositions of Consumer Indirect Purchaser Plaintiffs (“CIPPs”) have concluded.

Depositions of Commercial and Institutional Indirect Purchaser Plaintiffs (“CIIPPs”) have concluded, with the exception of one CIIPP that may still be deposed.

Defendants have expressed their intent to depose The Commonwealth of Puerto Rico pursuant to Rule 30(b)(6), and Defendants and Puerto Rico are in the process of scheduling that deposition which is expected to take place in November.

Defendants began noticing depositions of DAPs between June and October of 2022. The depositions of some DAPs will be complete by the October 31, 2022 fact discovery deadline. The Parties have agreed to take the following previously noticed depositions of 20 DAPs listed below in November (or a short while later for DAPs that filed most recently) to accommodate the schedules of the witnesses and counsel and to allow Defendants sufficient time to review documents produced by DAPs, some of which have not yet completed their document production:

1. Conagra
2. Winn-Dixie/Bi-Lo Holdings
3. Save Mart
4. Howard B. Samuels as Trustee for Central Grocers
5. Albertsons
6. Aldi
7. UNFI
8. Compass

9. Target Corporation
10. Cheney Brothers
11. Giant Eagle
12. Kraft
13. US Foods
14. Aramark
15. Quality Supply Co.
16. Meijer
17. Wakefern
18. Hy-Vee
19. Nestle Purina PetCare
20. Gordon Foods

Defendants also plan to take the depositions of the following DAPs, and Defendants plan to discuss the scheduling of these DAP depositions with their counsel next week:

1. Publix,
2. Raleys,
3. Dollar General, and
4. Associated Grocers of the South

In light of the ongoing document production by some of the DAPs, including some that have not yet started their document production, the precise number of DAP depositions that will need to occur after October 31 has not yet been fully determined.

DAPs have agreed to cooperate with Defendants to schedule additional depositions in November and possibly December (or a short while later for DAPs that filed most recently) as their document productions are completed.

**3. An overview of the status of any motions, orders, or other events of import in all related cases to date.**

The Court denied in part and granted in part Defendants’ motion to dismiss the operative complaints filed by DPPs, CIPPs, CIIPPs (collectively, the “Class Plaintiffs”); Winn-Dixie Stores, Inc. and Bi-Lo Holdings, LLC; and the Commonwealth of Puerto on October 20, 2020. ECF No. 520. In that order, the Court dismissed those Plaintiffs’ claims against Indiana Packers Corporation and dismissed certain state antitrust, consumer-protection, and unjust enrichment claims. It also held that those Plaintiffs failed to sufficiently allege acts of fraudulent concealment, but that Plaintiffs sufficiently pled a continuing violation to state plausible Sherman Act claims.

The Class Plaintiffs each filed a motion for class certification. ECF Nos. 1318, 1334, and 1340. The Defendants filed their opposition. ECF Nos. 1473, 1460, 1445, and 1441. Class Plaintiffs’ replies are due on November 18, 2022. Class Plaintiffs and Defendants submitted a joint letter brief to the Court regarding the hearing on Plaintiffs’ class certification motions. ECF No. 1511. If Plaintiffs’ proposal is adopted the due date for their opposition to Defendants’ *Daubert* motions and rebuttal expert reports would move from November 18, 2022 to November 1, 2022.<sup>1</sup> The parties request a ruling on

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<sup>1</sup> In the event the Court adopts this proposed schedule, Plaintiffs have requested that Defendants’ class certification experts, Dr. Haider and Dr. Mintert, be made available for

the class certification hearing date as soon as practicable to provide clarity to the class certification briefing schedule and related deadlines.

On September 8, 2022, the parties submitted a Stipulation Amending the Pretrial Scheduling Order (Doc. No. 1486) to extend the non-dispositive motion deadline to November 14, 2022, or 14 days after the close of fact discovery—whichever is later. The Court entered this Order on September 9, 2022. (Doc. No. 1488).

On September 20, 2022, Certain DAPs filed a Motion to Compel Sales Data from Certain Defendants (Doc. Nos. 1493-1501). This motion was heard by the Court on October 5, 2022 and taken under advisement. (Doc. No. 1526).

Plaintiffs are filing a motion requesting the Court issue a letter rogatory to facilitate the deposition of Sumio Matsumoto, a Tyson employee presently located in Canada, which will be heard on November 16, 2022, at 2:30 P.M. ECF No. 1520 (notice of hearing).

Several defendants have raised Rule 11 compliance issues with certain allegations made in DAPs' prior complaints. Defendants are hopeful that the DAPs' consolidated amended complaint, now required to be filed on November 3, 2022 (Doc. 1525), will address the issues raised and render Defendants' Rule 11 concerns moot. To the extent these issues are not resolved with the consolidated amended complaint, Defendants will bring them to the attention of the Court through an amended Rule 11 motion, or

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deposition prior to November 1, 2022. Defendants have stated that Dr. Mintert is unavailable in October due to prior professional commitments.

alternatively, may ask that those allegations be addressed through an early motion for partial summary judgment.

DAPs believe Defendants' Rule 11 concerns are baseless and question the inclusion of the above paragraph, given that no Defendant has filed any such motion with the Court.

Given the time required to harmonize the allegations in DAPs complaints and the large number of depositions that remain to be taken in the MDL over the next month, DAPs intend to ask the Court for a thirty-day extension of the deadline to file their master consolidated complaint. Under DAPs' proposal, the consolidated master complaint would be due by December 3, 2022 and Defendants would have until January 12, 2023 to answer or otherwise respond to that complaint. [Defendants have not yet taken a position on DAPs' request for an extension.]

**4. The status of any state-court litigation, if any, to date.**

The New Mexico Attorney General filed litigation in June 2021, asserting similar theories to those in the above-captioned matter, and alleging violations of New Mexico's antitrust, consumer protection, and unjust enrichment laws. Defendants have answered the complaint and the Parties have negotiated a Protective Order and will begin document discovery in due course.

The Alaska Attorney General filed litigation in September 2021, similarly premised on the same allegations in the above-captioned matter, and alleging violations of Alaska's antitrust, consumer protection, and unjust enrichment laws. Certain Defendants have answered the complaint, and certain others have appealed denials of



motions to dismiss based on personal jurisdiction. The State and Defendants that have answered are currently negotiating a pre-trial schedule.

**5. A description of any settlement efforts to date.**

The Class Plaintiffs have each settled with Defendants JBS and Smithfield on a class-wide basis. Their claims remain ongoing against the remaining Defendants. The Class Plaintiffs respectfully submit that they do not believe it would be permissible, appropriate, or beneficial to reaching further settlements to identify any additional settlement negotiations (if any) that have not yet resulted in a settlement agreement. Settlements between DAPs and Defendants typically involve strict confidentiality. However, certain DAPs have resolved their claims against Defendant JBS.

The Parties do not believe the Court's assistance with respect to any settlement or alternative dispute resolution efforts is needed at this time.

**6. A proposed agenda for the Case Management Conference.**

The Parties propose that the following topics be discussed at the upcoming Case Management Conference, subject to the Court's discretion:

- A. Overview of the procedural status of all actions;
- B. Overview of status of discovery in all related cases;
- C. Overview of status of any motions, orders, or other events of import in all related cases;
- D. Status of any state court litigation;
- E. Description of settlement efforts;
- F. Proposed leadership structure;

G. Proposal for harmonizing pretrial schedules governing DAPs and other cases;

H. Timing of discovery concerning authentication and admissibility;

I. Timing of the Court's hearing regarding class certification and related *Daubert* motions (*see* ECF No. 1511);

J. Discussion of a schedule for expert discovery and summary judgment briefing;<sup>2</sup> and

K. Forthcoming consolidated DAP complaint.

**7. A list of all counsel of record for each Plaintiff, Class, Defendant, or group of parties sharing common representation, including any monikers used to identify particular groups of parties, if any.**

Lists of counsel of record for DPPs, CIPPs, CIIPPs, DAPs and Defendants are attached as Exhibits A-F.

**8. A proposed leadership structure for Class Plaintiffs' counsel, Direct Action Plaintiffs' counsel, and Defendants' counsel.**

The parties are submitting their proposals to the Court by email pursuant to the Court's instruction. The Class Plaintiffs note that appointment of a steering committee that includes liaison counsel for the other parties (Puerto Rico, the DAPs, and Defendants) need not, and should not, alter the Court's previous appointment of co-lead counsel for DPPs, CIPPs, and CIIPPs. *See* ECF Nos. 149, 150, 151. Class Plaintiffs request that the Court reaffirm the appointment of the following firms as co-lead counsel

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<sup>2</sup> Plaintiffs believe this is an appropriate topic for discussion at this case management conferences. Defendants understood that this would be addressed at the November status conference.

for each class: DPPs (Lockridge Grindal Nauen P.L.L.P. and Pearson, Simon & Warshaw, LLP); CIPPs (Hagens Berman Sobol Shapiro LLP and Gustafson Gluek PLLC); and CIIPPs (Cuneo Gilbert & LaDuca, LLP and Larson King, LLP).

DAPs' Position: DAPs each present an individual direct action and not a class action. Each DAP lawyer represents those direct action plaintiffs on whose behalf the DAP lawyer filed the Complaint. A given DAP lawyer does not represent, and ethically cannot represent, a direct action plaintiff that has not retained that DAP lawyer for this case. This does not foreclose coordination among DAP lawyers who represent different direct action plaintiffs. Class counsel do not and cannot represent direct action plaintiffs, as class counsel represent a different client, *i.e.*, the class, and owe a fiduciary duty to the class, and not to a given direct action plaintiff that has engaged its own counsel and filed its own Complaint (and this demonstrates its intention not to participate in the class).

DAPs respectfully suggest that the leadership structure of this MDL align with the fiduciary duties of the parties' counsel.

Accordingly, DAPs suggest that the Court appoint a single law firm as DAP Liaison Counsel, charged with the responsibility for coordinating, as necessary, with counsel for other parties in the MDL with respect to issues that involve all DAPs. This is the framework used in a great many MDL antitrust cases. *E.g.*, *Generics*, MDL 2724 (Rufe, J., E.D. Penn.); *Packaged Seafood*, MDL 2670 (Sabraw, J., S.D. Cal.); *Cathode Ray Tube*, MDL 1917 (Tigar, J., N.D. Cal.); *Interchange*, MDL 1720 (Gleeson, J., E.D.N.Y.); *Processed Eggs*, MDL 2002 (Pratter, J., E.D. Penn.).

The parties' counsel would take up DAP-specific issues with the lawyers representing a given DAP.

The DAPs' Liaison Counsel would coordinate with counsel for the Class Plaintiffs and the Defendants with respect to those issues that pertain to the overall MDL. Depending upon the nature of the issue presented, other DAP counsel may participate in such discussions because DAPs' Liaison Counsel can speak for other DAPs for administrative purposes, but he/she cannot bind direct action plaintiffs whom he/she does not represent.

DAPs have reached agreement on a proposed liaison counsel for DAPs. Pursuant to the Court's Order, DAPs will email their proposed choice for liaison counsel to the Court. Given the relatively small number of DAP law firms, which have previously worked together in other matters, DAPs believe that this leadership structure would be sufficient and that a steering committee with additional DAP lawyers is unnecessary.

Defendants' Position: Similar to DAPs, Defendants agree that counsel for the Parties have been working together efficiently and coordinating with the Court seamlessly without a group leader, steering committee, or liaison counsel, in part because of the small number of Defendants. In addition, a lawyer for one Defendant cannot represent another Defendant or make agreements on another Defendant's behalf. To the extent the Court nevertheless believes that a single liaison counsel for coordinating with the Court would assist the Court, Defendants can select a proposed liaison counsel and propose that counsel to the Court.

**9. A proposal for harmonizing the pretrial schedules governing the DAPs and the other Plaintiff groups.**

The Parties have been on the same schedule for discovery. *See* ECF No. 658.

Certain issues are unique to certain Plaintiffs or groups of Plaintiffs. For instance, DAPs and Puerto Rico are not seeking class certification, and the Puerto Rico complaint has already been subject to a motion to dismiss and answered, such that consolidation of its complaint with those of DAPs is not warranted. And as the Court has already ordered, DAPs are required to file a consolidated complaint on November 3, 2022, which Defendants are required to answer on December 5, 2022. *See* ECF No. 1525.

**Defendants' Position:** With respect to schedules for expert discovery and summary judgment briefing, the parties will meet and confer and be prepared to discuss a joint or competing proposals “at the case management conference following the one set on Monday, 10/17,” pursuant to an email from the Courtroom Deputy confirming that this issue would not be on the agenda for the October 17 conference. The schedule proposed by Plaintiffs below presents a number of issues that need further consideration; for example, a) the appropriate timing for the commencement of expert discovery, and b) why expert reports can seemingly only be submitted by the party with the burden of persuasion when Defendants might file affirmative, non-rebuttal reports on issues for which Plaintiffs bear the burden of persuasion. Defendants are differently situated, and have been working among themselves to present a unified counterproposal in response to an initial proposal by DAPs from August 4, 2022, followed by a revised proposal sent September 28, 2022, in which Class Plaintiffs have since joined. Defendants expect to

present and discuss with Plaintiffs a single competing proposal in advance of the November conference, and are hopeful the parties will be able to stipulate to a schedule without Court intervention.

**Plaintiffs' Position:** Plaintiffs believe that the Court should schedule expert discovery deadlines and *Daubert*/summary judgment briefing deadlines for all Plaintiffs now to conclude by the end of 2023.

To the extent that the Court intends to require the Parties to complete expert discovery in 2023 (as all Plaintiffs propose), it would be helpful to know what deadlines will apply in the near term, so that the Parties can begin working to reach them.<sup>3</sup> Accordingly, the Plaintiffs propose the following schedule, which would allow all Parties to complete discovery and brief dispositive motions on a harmonized schedule:

**Merits Expert Discovery:** Disclosure of the identities of expert witnesses under Rule 26(a)(2)(A), the full disclosures required by Rule 26(a)(2)(B) (including the written report prepared and signed by each expert witness), and the full disclosures required by Rule 26(a)(2)(C), must be made as follows:

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<sup>3</sup> Plaintiffs understand that the Court does not intend to *require* the Parties to confer on expert discovery and summary judgment deadlines prior to the October Status Conference, but did not understand the email from the Courtroom Deputy to “confirm[] that this issue would not be on the agenda” as Defendants suggest. Defendants have had more than two months to consider an invitation from DAPs to discuss expert discovery deadlines that would apply following the close of fact discovery, but have (to this point) declined to meet and confer on this topic. Indeed, on August 4, 2022, DAPs proposed a schedule for Rule 26 expert disclosures to Defendants. Defendants declined to discuss this issue with DAPs at that time. On September 28, 2022, DAPs made a second scheduling proposal to Defendants that would govern expert disclosures, which the Class Plaintiffs supported. (That second proposal is included in this submission.) Despite these repeated requests by DAPs to discuss this topic, Defendants have yet to take any position

- Identification and Rule 26(a)(2)(B) and 26(a)(2)(C) disclosures must be made for any expert who may testify at trial regarding issues on which the party bears the burden of persuasion no later than 180 days after the fact discovery deadline.
- Identification and Rule 26(a)(2)(B) and 26(a)(2)(C) disclosures must be made for any expert who may testify at trial in rebuttal to any initial expert no later than 70 days after service of the initial expert report.
- Expert reports from previously disclosed experts replying in further support of their initial reports must be made no later than 45 days after service of the opposition's rebuttal report
- Expert discovery, including depositions, may be conducted after service of an expert's initial report, but not after an expert's reply report. All expert depositions must be completed no later than 275 days after the close of fact discovery.

Dispositive Motions: Summary judgment and Daubert motions shall be filed on the following schedule:

- Motions for summary judgment/Daubert due by September 8, 2023
- Responses in opposition due by November 9, 2023
- Replies in support due by December 15, 2023

**10. A schedule of status conferences to be conducted approximately every 30 days via ZoomGov for the remainder of the 2022 calendar year and the 2023 calendar year, notwithstanding the parties' ability to ask that any given status conference be cancelled or postponed closer to that date.**

The parties propose that status conferences be scheduled for the following dates:

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on DAPs' proposal.

Tuesday, November 15, 2022

Thursday, December 15, 2022

Monday, January 16, 2023

Wednesday, February 15, 2023

Wednesday, March 15, 2023

Monday, April 17, 2023

Monday, May 15, 2023

Thursday, June 15, 2023

Monday, July 17, 2023

Tuesday, August 15, 2023

Friday, September 15, 2023

Monday, October 16, 2023

Wednesday, November 15, 2023

Friday, December 15, 2023



DATED: October 13, 2022

Respectfully submitted,

/s/ Bobby Pouya

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